IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (LODGING) NO.382 OF 2005
IN
APPEAL NO. 1 OF 2005
IN
COMPANY PETITION NO. 39 OF 2003

Panther Fincap and Management
Services Ltd .... Appellant
(Orig. Resp)

vs

Central Government
Union of India through the
Department of Company Affairs .... Respondent
(Orig.Petitioner)

WITH

APPEAL (LODGING) NO.402 OF 2005
IN
APPEAL NO. 2 OF 2005
IN
COMPANY PETITION NO. 44 OF 2003

NH Securities Ltd .... Appellant
(Orig. Resp)

vs

Central Government
Union of India through the
Department of Company Affairs .... Respondent
(Orig.Petitioner)

WITH

APPEAL (LODGING) NO.404 OF 2005
IN
APPEAL NO. 3 OF 2005
IN
COMPANY PETITION NO. 36 OF 2003

Luminant Investments P.Ltd .... Appellant
(Orig. Resp)

vs

Central Government
Union of India through the
Department of Company Affairs .... Respondent
(Orig.Petitioner)

WITH

APPEAL (LODGING) NO.406 OF 2005
IN
APPEAL NO. 4 OF 2005
IN
COMPANY PETITION NO. 38 OF 2003

Goldfish Computers P.Ltd
(Now known as GIBS Computers P.Ltd). Appellant
(Orig. Resp)

vs

Central Government
Union of India through the
Department of Company Affairs .... Respondent
(Orig.Petitioner)

WITH

APPEAL (LODGING) NO.416 OF 2005
IN
APPEAL NO. 5 OF 2005
IN
COMPANY PETITION NO. 40 OF 2003

Manmandir Estate Developers
Private Limited .... Appellant
(Orig. Resp)

vs

Central Government
Union of India through the
Department of Company Affairs .... Respondent
(Orig.Petitioner)

WITH

APPEAL (LODGING) NO.414 OF 2005
IN
APPEAL NO. 6 OF 2005

IN
COMPANY PETITION NO. 34 OF 2003

Panther Industrial
Products Limited .... Appellant
(Orig. Resp)

vs

Central Government
Union of India through the
Department of Company Affairs .... Respondent
(Orig.Petitioner)

WITH

APPEAL (LODGING) NO.411 OF 2005
IN
APPEAL NO. 7 OF 2005
IN
COMPANY PETITION NO. 52 OF 2003

Nakshatra Software P.Ltd
(now known as Netscape Software P.Ltd)..Appellant
(Orig. Resp)

vs

Central Government
Union of India through the
Department of Company Affairs .... Respondent
(Orig.Petitioner)

WITH

APPEAL (LODGING) NO.405 OF 2005
IN
APPEAL NO. 8 OF 2005
IN
COMPANY PETITION NO. 60 OF 2003

Triumph International
Finance India Ltd .... Appellant
(Orig. Resp)

vs

Central Government
Union of India through the

Department of Company Affairs .... Respondent
(Orig.Petitioner)

WITH
APPEAL (LODGING) NO.403 OF 2005
IN
APPEAL NO. 9 OF 2005
IN
COMPANY PETITION NO. 68 OF 2003

Triumph Securities
.... Appellant
(Orig. Resp)

vs

Central Government
Union of India through the
Department of Company Affairs .... Respondent
(Orig.Petitioner)

WITH

APPEAL (LODGING) NO.410 OF 2005
IN
APPEAL NO.10 OF 2005
IN
COMPANY PETITION NO. 64 OF 2003

KNP Securities P.Ltd
.... Appellant
(Orig. Resp)

vs

Central Government
Union of India through the
Department of Company Affairs .... Respondent
(Orig.Petitioner)

WITH

APPEAL (LODGING) NO.417 OF 2005
IN
APPEAL NO.11 OF 2005
IN
COMPANY PETITION NO. 56 OF 2003

Panther Investrade Ltd
.... Appellant
(Orig. Resp)

vs

Central Government
Union of India through the
Department of Company Affairs .... Respondent
(Orig.Petitioner)

WITH

APPEAL (LODGING) NO.415 OF 2005
IN
APPEAL NO.12 OF 2005
IN
COMPANY PETITION NO. 65 OF 2003

VN Parekh Securities P.Ltd .... Appellant
(Orig. Resp)

vs

Central Government
Union of India through the
Department of Company Affairs .... Respondent
(Orig.Petitioner)

WITH

APPEAL (LODGING) NO.413 OF 2005
IN
APPEAL NO.13 OF 2005
IN
COMPANY PETITION NO. 67 OF 2003

Simangal Investrade Ltd .... Appellant
(Orig. Resp)

vs

Central Government
Union of India through the
Department of Company Affairs .... Respondent
(Orig.Petitioner)

WITH

APPEAL (LODGING) NO.412 OF 2005

IN
APPEAL NO.14 OF 2005
IN
COMPANY PETITION NO. 49 OF 2003

Chitrakut Computers P.Ltd
.... Appellant
(Orig. Resp)

vs

Central Government
Union of India through the
Department of Company Affairs .... Respondent
(Orig.Petitioner)

Mr.N.H. Seervai i/b. Ms.Prarthna K. for the Appellants.

Mr.B.A. Desai, Additional Solicitor General with Mr.A.M. Sethana with Mr.Suresh Kumar for the Respondents.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 2ND MAY, 2005.

P.C. :

1. The above appeals have been filed against the order and judgement of the learned single Judge, dismissing the appellants appeals filed under section 10-F of the Companies Act, 1956. The section 10-F appeals were filed by the appellant against the order of the Company Law Board dated 27th September, 2004. The Company Law Board passed the said orders in Company Petition No.39 of 2003 filed by the respondent on 2nd May, 2003 seeking permission to investigate the affairs of the companies in exercise of powers

conferred under section 237 (b)(i) of the Companies Act.

2. The learned counsel, agreed that the order passed by us in the first of the above appeals would govern the result in the remaining appeals. We shall therefore refer to the facts in the first appeal.

3. The learned Judge has in his detailed judgement rejected each of the points raised by the appellants. Considering the facts of the present case, we do not think it necessary to deal with the questions of law raised by the appellants and decided by the learned Judge. Though only prima-facie, we are of the opinion that no fault can be found with the judgement of the learned Judge on any of the points decided by him. However, in the facts of this case we are of the opinion that the question of law does not arise, and the above appeals ought to be dismissed on facts.

4. As we are in agreement with the learned single Judge, we will refer to the facts only briefly. The respondent filed Company Petition No.39 of 2003 before the Company Law Board seeking permission to investigate the affairs of the company in exercise of

the powers conferred by section 237 (b)(i) of the Companies Act. The application was based on material gathered from three sources, viz. the report of the Joint Parliamentary Committee, reports pursuant to the investigation under section 209 (A) of the Companies Act and the interim report of SEBI.

5. It was not, and indeed could not have been contended with any force that there were no grounds justifying the invocation of powers under section 237 of the Companies Act. To justify the invocation of powers under section 237 it is not necessary for the respondent to establish the guilt on the part of the company or its officers. It is sufficient, if the respondent established that there were circumstances suggesting that the business of the company is being conducted with intent to defraud its creditors, members or any other persons or was otherwise for a fraudulent or unlawful purpose or was conducted in a manner oppressive to any of its members, or that the company was formed for any fraudulent or unlawful purpose, or that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members. Considering the nature of the

evidence and information before it, it is clear that the respondent was not only justified but duty-bound to exercise its powers, under section 237. The material, to say the least, warranted an investigation. The investigation pertained to the sudden collapse of the stock market in the year 2001. The same was attributed to one Ketan Parekh. It was alleged that he through his various entities and companies committed a fraud, which led to the said crash on the stock market. The respondent contended that there was reason to believe that the companies in the above appeals were entirely responsible for the crash in the stock markets in 2001. The same was controlled and/or held directly or indirectly by the said Ketan Parekh. This led to considerable discussion in the Lok Sabha on 26th April, 2001 leading to the constitution of the Parliamentary committee as a fact finding committee to investigate the said crash in the stock market in 2001. The Joint Parliamentary committee submitted its report, and recommended investigations being carried out in respect of certain corporate groups belonging to the said Ketan Parekh. The Joint Parliamentary committee also directed carrying out investigations and taking appropriate action under the provisions of the SEBI Act. The respondents in exercise of their powers

under section 209 (A) of the Companies Act, carried out investigations and submitted a preliminary report. The investigation is still in progress.

6. Whether the aforesaid entities had in fact, carried on business, as alleged by the respondents or not is another matter. We are satisfied that the facts disclosed in these reports warranted, to say the least, investigations of every type, including in exercise of powers under section 237 of the Companies Act.

7. The Company Law Board by its order dated 27th September, 2004 impugned in the appeals filed before the learned single Judge held that grounds were made out for carrying out an investigation under section 237 (b)(i). The Company Law board held that the allegations of fraud and scams against the aforesaid corporate entities warranted, the said investigation. The Company Law board accordingly allowed the company petition and permitted the Department of Company affairs to carry out investigations under Section 237, into the affairs of each of the aforesaid companies. The Company Law board, passed a common order dated 22nd September, 2004. The sixteen appeals before the learned single Judge challenged this order of the

Company Law Board, under section 10-F of the Companies Act.

8. The learned single Judge considered the following three questions of law raised by the appellant :-

> "1. Whether it is a condition precedent for exercise of power under section 237(b)(i) of the companies act that the business of the company should be in operation as on the date when the power is sought to be exercised by the respondent or that once the business of the company has ceased to be in operation for any reason whatsoever voluntarily or otherwise, then the respondents have no jurisdiction to initiate and or exercise jurisdiction vested in them by virtue of the proceedings under section 237(b)(i) ?
>
> ii). Whether on the facts of the present case the respondents have made out prima-facie case for investigation or alternatively there is a material available for exercising jurisdiction by the respondent under section 237(b)(i) ?
>
> iii). Whether in view of simultaneous investigations carried out by SEBI, CBI and department of company affairs under section 209(A) the respondent ought not be permitted to launch a fresh investigation in exercise of power under section 237(b)(i) of the Companies Act on same material and on same facts ?

9. Mr Seervai, the learned senior counsel appearing on behalf of the appellants essentially confined his arguments before us only to the first question. He submitted that the aforesaid companies are not, and were not at the time of the respondents application for investigation under section 237 carrying on any business whatsoever. Founding himself on this basis he submitted that the respondents had no jurisdiction to exercise their powers under section 237. It is submitted that to invoke the powers under Section 237, it is essential that the company should be carrying on business *in praesenti*. He submitted that if the company was not carrying on business *in praesenti* the Central Government and/or the company law board had no jurisdiction to investigate into its affairs under section 237 (b)(ii).

10. The submission involves mixed questions of law and fact. The learned Judge has decided against the appellants both on facts, and on law. Prima-facie, we are unable to find any fault in the reasoning of the learned single Judge of the question of law. However, on the question of fact, we are entirely in agreement with the learned single Judge. We therefore find it unnecessary to decide the question of law raised by Mr Seervai. The question of

law would arise only if Mr Seervai succeeded in satisfying us that in fact, the aforesaid companies had seized to carry on any business within the meaning of that expression in section 237 (b)(i). Section 237 reads as under :-

> **"237. Without prejudice to its powers under section 235, the Central Government -**
>
> (a) shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the central government may direct -
>
> (i) the company, by special resolution; or (ii) the court, by order, declares that the affairs of the company ought to be investigated by an inspector appointed by the central government and
>
> (b) may do so, in its opinion or in the opinion of the tribunal] there are circumstances suggesting -
>
> (i) that the business of the company is being conducted with intend to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members, or that the company was formed for any fraudulent or unlawful purpose ;
>
> (ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members ; or

> (iii) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager of the company."

11. Mr.Seervai submitted that the above companies had seized to carry on any business whatsoever. We are unable to agree. Mr Seervai relied upon paragraph 6 of an affidavit in rejoinder filed on behalf of the appellants before the learned single Judge. He submitted that various authorities had issued summons, commenced investigations and proceedings against the appellants their directors and relatives which had severely hampered the functioning of the companies. As rightly held by the learned Judge, the mere fact that such orders have been passed, and investigation commenced does not lead to the conclusion that the companies were not carrying on any business.

12. Mr Seervai, emphasised that by an order dated 4th April, 2001 SEBI had debarred them from doing any fresh business on the stock exchange. He also relied upon, an order dated 12th December, 2003 by which SEBI had prohibited them from buying, selling or dealing in securities, in any manner, directly or indirectly, and

from associating with the securities market for a period of 14 years. The latter order was passed much after the application for investigation under section 237. The former prohibited only one kind of business activity viz. dealing on the stock exchanges.

13. We are in respectful agreement with the learned single Judge, who came to the conclusion that despite all these orders, all that could be said, was that the functioning of the business of the companies had been considerably, indeed, severely hampered. It could not from that alone be inferred that the companies were not involved in any business activities whatsoever. In fact, the affidavits filed by the appellants themselves indicated beyond doubt that at the relevant time, they were carrying on business. The learned Judge in this regard, relied upon paragraph 3 (b), 6, 7, and 10 of an affidavit filed by the appellants before the Company Law board. To that we would add paragraph 3(f). The said paragraphs read as under :-

> "3(b) It is incumbent that in order to achieve this objective, the functioning of the Applicant/Respondent group of companies ought not to be cirppled which situation would inevitably result if the order dated 27.09.2004 passed by this Hon'ble Board is not amended for the purpose of

determining the real question, as would be evident from the averments made hereinafter in this application."

3(f) This is a very critical juncture for the Respondents / Applicants when sincere efforts are being made to liquidate dues of banks and creditors. Any circumstances which stalls even remotely such efforts would be grossly against public interest.

6. It is stated in this connection that the following the details of payment made by the Applicant group of companies and value of Share/Property lying with the Bank:-

PARTICULARS	AMT(RS. IN CRORES)
By Cash/Deposits/Divident	27.34
By sale of stocks	15.18
Paid to Bank of India	28.92
TOTAL	71.44

It may be mentioned that out of the figures indicated above, even as recently as during the period ranging between 11.09.2004 and 04.11.2004, securities worth Rs.15,18,02,166.05(Rupees Fifteen Crores Eighteen Lacs Two Thousand One Hundred and Sixty Six and paise Five), held by the Ketan Parekh group with Madhavpura Mercantile Cooperative Bank Limited were liquidated towards discharging dues towards the said bank by the Ketan Parekh group.

7. It is also submitted that Shri Ketan V. Parekh has always cooperated with the Banks even

> admist his crisis. In spite of all the accounts frozen by various agencies and a ban on Shri Ketan V. Parekh and on his various Group of Companies from carrying out activities in the Capital markets,, the aforesaid amounts paid reflects clear intention on the part of Shri Ketan v. Parekh and his Group of companies towards liquidating dues of bankers, financial institutions, and creditors. Admist such a situation it would be contrary to public interest if efforts of the Ketan Parekh group of companies to liquidate bank's dues are jeopardised in any manner.
>
> 10. Admist these fact finding investigations, to impose another investigation would have the effect of crippling the functioning of Ketan Parekh Group of companies and would adversely affect their capacities to liquidate dues of creditors which would be contrary to public interest."

14. We are in agreement with the learned Judge that the aforesaid averments indicate clearly that the company had not stopped functioning altogether. They indicate that at the relevant time the companies were carrying on/conducting business.

15. We would like to add that it is relevant in this regard to note one of the main objects of one of the above companies, which reads as under :-

> "To subscribe, purchase, acquire, hold, save, underwrite, invest well, dispose and

> otherwise deal in shares, stocks, debentures, debenture stock, government securities, bonds, units or other authority, supreme, municipal or local."(emphasis supplied)

16. Thus disposal of shares is also a part of the business of the company. Mr Seervai, however, submitted that the shares were disposed of, only for the purpose of paying the debts of these entities. This however is a matter which requires investigation. Whether the disposal of the shares was in accordance with law or otherwise, is a matter which will be investigated by the respondent, under section 237. For instance, the company may after disposing of its assets make fictitious payments/repayments otherwise than in accordance with law. These are matters which no doubt would require investigation. The disposal of assets is established, also from the balance sheets of the companies.

17. It is pertinent to note that the grievance of the appellants in the said affidavit as well, as Mr Seervai’s grievance before us on their behalf, was that any investigation under section 237, would cripple the functioning of the appellant companies. This belies the contention that the company had

stopped all business activities. No effort has been made to indicate why we should presume that the functioning referred to by the appellants themselves is restricted in any manner. It is true that there are restraint orders issued by various statutory authorities. It is clear to us that the restraint, is not all encompassing freezing all business activities of the companies.

18. It is circumstances, we are in agreement with the learned Judge, who held that the conduct of some business on the part of the appellants is clearly established. In this view of the matter, the provisions of section 237 are clearly applicable.

. The above appeals are accordingly dismissed.